

PRESIDING OFFICER'S REPORT TO THE AGENCY ON RULEMAKING

In the Matter of the Proposed Rulemaking to establish procedures and criteria for landowners to place large wood key pieces during a forest operation under the governance of the Forest Practices Act.

Date of Report Filing: January 3, 2007

TO: Oregon Board of Forestry

FROM: Mike Cafferata, Presiding Officer

Subject: Presiding officer's summary report on the rulemaking hearing, written comments, and oral submissions received by the agency.

The department issued a Notice of Proposed Rulemaking in October, 2006. Notice was published in The Oregonian, Capital Press, The Statesman Journal, and The East Oregonian. The Notice was published in the Oregon Bulletin of the Secretary of State on November 1, 2006.

SUMMARY OF PUBLIC HEARING

Hearing Date: November 15, 2006

A rulemaking hearing was convened at 10:00 a.m. on November 15, 2006 in Salem. Written comment was received up to the close of business, 5 p.m., on November 27, 2006.

One person attended the rule making hearing. The proposed rules changes were briefly summarized and a formal request for receiving comments was made. No public testimony was offered.

SUMMARY OF REGIONAL COMMITTEE MEETINGS

The rule language was shared with the three regional forest practices committees during the public comment period. There was general support of the rule concepts and language. Two areas of concern were identified.

1. The new placement rule does not specify hardwood or conifer, but conifer is specified to receive basal area credit. This comment pertains to the existing basal area credit rule and the requirement that conifer is required to receive credit. Some hardwoods may provide equal or more value than conifers and should also qualify for basal area credit. This is an applicable comment to the basal area credit rule; however the criteria to receive credit were previously developed and codified in the rules. This section is not open for amendments at this time. Under the new rule conifer or hardwood can be placed.
2. Some regional committee members found the relationship between the placement rule and the basal area credit rule to be confusing and asked that ODF look for ways to clarify the relationship. Staff have been unable to find language that appears clearer while still meeting the intent of the new language.

Based on the regional committee meetings no changes in the language were made.

SUMMARY OF WRITTEN COMMENTS

The written and oral comments received during the comment period were:

1. A letter of endorsement from the Associated Oregon Loggers. The Associated Oregon Loggers support these new rules for the following reasons:
 - Forest operators recognize that placement of large wood key pieces in fish streams is an important method of improving fish habitat and stream function.
 - These rules streamline placement activities by doing away with the EPA permitting process.
 - These new rules are consistent with ‘stewardship cooperation.’ An essential tenet of successful forest resource protection in Oregon forests is the cooperation by the regulated community to willingly protect resources during operations. This ‘cooperative stewardship’ occurs largely due to a framework of relationships and working customs that engage the regulated community in *both* development *and* implementation of effective rules and voluntary measures. Good stewardship comes from the diligent attention of landowners, operators, and state foresters—all working together to do the right things. AOL encourages ODF to adopt effective stream and water protection rules—such as this proposed rulemaking—because the success of Oregon’s forest practices program relies on this type of continuous improvement. Through our mutual efforts, we urge you to continue ODF’s pursuit toward the ideal of ‘cooperative stewardship’, where operational effectiveness and least cost to the operator and landowner are primary priorities.
2. A request to clarify use of the word ‘engineered’ to convey construction of stream bed or banks would fall outside the jurisdiction of the FPA and possibly require a state and/or federal-permit; rather than disallow simple projects meeting the rule conditions that

happened to be designed by an engineer. Neither does FPA authority encompass the use of 'engineered' man-made materials designed to simulate natural large wood, which could require permitting outside FPA processes.

Based in the submitted comments, a minor change in proposed language is needed for clarification purposes. In coordination with EPA representatives, ODF removed the word 'engineered' and reworted 629-640-0105 (C) to avoid confusion.

CONCLUSION

The presiding officer recommends adopting the rules as amended.